

LAW OFFICES

---

**SHOOK, HARDY & BACON**

---

REPORT ON RECENT ETS  
AND IAQ DEVELOPMENTS

---

April 2, 1993

---

**SHB**

## — IN THIS ISSUE —

IN THE UNITED STATESREGULATORY AND LEGISLATIVE MATTERS

- ◆ Indoor Air Quality Act of 1993 is introduced in the Senate, p. 1.
- Clinton administration will not appeal *AFL-CIO v. OSHA*, p. 1.
- EPA reports to Congress on radon in schools, p. 4.

ETS-RELATED LITIGATION AGAINST CIGARETTE MANUFACTURERS

- Defendants file class action appeal brief in *Broin*, p. 6.
- Trial is set for November 1993 in *Butler*, p. 6.
- ◆ McKinney files suit against cigarette manufacturers; no decision yet from Supreme Court, p. 6.
- Defendants' dispositive motions are granted in *Zwillman*, p. 7.

ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

- Details on employees' suit against renovators of Bryn Mawr, p. 7.

LEGAL ISSUES AND DEVELOPMENTS

- ◆ ASH produces new antismoking pamphlet, p. 8.
- ◆ Minnesota Attorney General letter opinion on workplace smoking, p. 8.

OTHER DEVELOPMENTS

- New York will spend \$50,000 each for smoking shelters, p. 9.

MEDIA COVERAGE

- ◆ Scientist Ross Brownson has letter published in *San Francisco Chronicle*, p. 10.

SCIENTIFIC/TECHNICAL ITEMS

- Eleven new studies relating to ETS, p. 11.

IN EUROPE & AROUND THE WORLDREGULATORY AND LEGISLATIVE MATTERS

- Government activity in Australia, Austria, Canada, Germany, India, Israel, Philippines and the United Kingdom begin on p. 13.

ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

- Hearings are underway in *Wright v. Ladbroke's*, p. 15.

LEGAL ISSUES AND DEVELOPMENTS

- BAAF issues guidelines on placing children with smokers, p. 16.

OTHER DEVELOPMENTS

- ◆ Confederation of European Community Cigarette Manufacturers publishes pamphlet on ETS, p. 16.
- Smoking in pubs and restaurants issue stirs activities in the U.K., p. 17.
- Airline activities in Bahrain, Iceland, Scandinavia, Switzerland and the U.K., p. 17.

MEDIA COVERAGE

- "Federal Court Warns Tobacco Institute over Brochure," in *AFCO*, p. 18.
- U.K. civil servant says, "Smokers Forced Me to Quit Job," p. 19.

- ◆ Discussions throughout this Report that bear this symbol contain information about events and activities related to the EPA Risk Assessment on ETS.

2046361338

# — TABLE OF CONTENTS —

Issue 44

April 2, 1993

## IN THE UNITED STATES

### REGULATORY AND LEGISLATIVE MATTERS

#### CONGRESS

- [1] ♦Indoor Air Quality Act of 1993 Introduced in Senate ..... 1

#### U.S. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

- [2] *AFL-CIO v. OSHA*: OSHA allows Time for Appeal to Expire ..... 1  
 [3] Workplace IAQ/ETS Rules Stalled by Vacant Position ..... 2  
 [4] *ASH v. Department of Labor*: Parties Disagree About Whether to Delay Case ..... 2  
 [5] OSHA Reform Legislation Garners Criticism and Support ..... 2

#### IAQ MODEL LAW TASK FORCE

- [6] Task Force Continues Work on Model Law ..... 3

#### U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)

- [7] Results of School Radon Survey Reported to Congress ..... 4

#### ASHRAE

- [8] Critics Charge ASHRAE Standards Reflect Business Interests ..... 4

#### STATE AND LOCAL GOVERNMENTS

- [9] Privacy Legislation ..... 4  
 [10] ETS-Related State and Local Legislative Activities ..... 5

### ETS-RELATED LITIGATION AGAINST CIGARETTE MANUFACTURERS

- [11] *Broin*: Defendants File Brief on Class Action Appeal ..... 6  
 [12] *Butler*: Trial Court Sets Case for November 1993 ..... 6  
 [13] ♦*McKinney*: Prisoner files Suit Against Manufacturers ..... 6  
 [14] *Zwillman*: Court Grants Defendants' Dispositive Motions ..... 7

### ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

#### WORKPLACE: IAQ/SICK BUILDING SYNDROME

- [15] *Bensing v. Voith & Mactavish* (Philadelphia County Court of Common Pleas, Pennsylvania) (filed February 3, 1993); *Skoogfors v. Voith & Mactavish* (Philadelphia County Court of Common Pleas, Pennsylvania) (filed January 21, 1993) ..... 7

#### COLLECTIVE BARGAINING

- [16] *United Paperworkers International Union, Local 1279 v. Wisconsin Tissue Mills, Inc.*, 1993 U.S. Dist. LEXIS 3348 (U.S. District Court, Eastern District, Wisconsin) (decided March 13, 1993) ..... 8

### LEGAL ISSUES AND DEVELOPMENTS

- [17] ♦ASH Produces New Antismoking Pamphlet ..... 8  
 [18] ♦Minnesota Attorney General Opines About Effect of Risk Assessment in the Workplace ..... 8

### U.S. INCIDENTS OF SBS/BRI

- [19] Sick Building Syndrome/Building-Related Illness in Florida, Massachusetts, Missouri and New York ..... 8

### OTHER DEVELOPMENTS

- [20] State to Provide Employees with Smoking Shelters ..... 9  
 [21] Centers for Disease Control (CDC) Launches ETS Information Campaign ..... 9  
 [22] Survey Asks About Smoking and Children ..... 10  
 [23] Large Increase in Corporate Smoking Bans Predicted ..... 10  
 [24] ♦Children Advised to Change Parents' Smoking Habits ..... 10

### MEDIA COVERAGE

- [25] ♦"EPA Study on Passive Smoking Stirs Debate and Passions," R. Brownson, *The San Francisco Chronicle*, March 19, 1993 ..... 10  
 [26] ♦"Don't Mind if I Smoke," T. McNichol, *USA Weekend*, March 28, 1993 ..... 10

## SCIENTIFIC/TECHNICAL ITEMS

## UPCOMING MEETINGS

- [27] 1993 Annual Summer Toxicology Forum, Given Institute of Pathobiology,  
Aspen, Colorado, July 12-16, 1993 ..... 11

## LUNG CANCER

- [28] "Indoor Air Pollution and Lung Cancer in Guangzhou, People's Republic of  
China," Q. Liu, A.J. Sasco, E. Riboli, and M.X. Hu,  
*American Journal of Epidemiology* 137(2): 145-154, 1993 [See Appendix A] ..... 11

## CARDIOVASCULAR ISSUES

- [29] "Environmental Tobacco Smoke and Coronary Heart Disease," A.K. Armitage,  
*Journal of Smoking-Related Disorders* 4(1): 27-36, 1993 [See Appendix A] ..... 11
- [30] "Passive Smoking and the Risk of Acute Myocardial Infarction," C. La Vecchia,  
B. D'Avanzo, M.G. Franzosi, and G. Tognoni, *The Lancet* 341: 505-506, 1993  
[See Appendix A] ..... 11

## RESPIRATORY DISEASES AND CONDITIONS — CHILDREN

- [31] "Relation of Passive Smoking as Assessed by Salivary Cotinine Concentration and  
Questionnaire to Spirometric Indices in Children," D.G. Cook,  
P.H. Whincup, O. Papacosta, D.P. Strachan, M.J. Jarvis, and  
A. Bryant, *Thorax* 48: 14-20, 1993 [See Appendix A] ..... 11
- [32] "The Decrease in Severity of Asthma in Children of Parents Who Smoke Since  
the Parents Have Been Exposing Them to Less Cigarette Smoke,"  
A.B. Murray and B.J. Morrison, *Journal of Allergy and Clinical  
Immunology* 91: 102-110, 1993 [See Appendix A] ..... 11
- [33] "Lung Function, Respiratory Illness, and Passive Smoking in British Primary  
School Children," R.J. Rona and S. Chinn, *Thorax* 48: 21-25, 1993 [See Appendix A] ..... 12
- [34] "Hispanic Children With Asthma: Morbidity," P.R. Wood, H.A. Hidalgo,  
T.J. Prihoda, and M.E. Kromer, *Pediatrics* 91: 62-69, 1993 [See Appendix A] ..... 12

## OTHER HEALTH ISSUES

- [35] "Editorial: Give a Dog-End a Bad Name," A.D.S. Caldwell, *Journal of  
Smoking-Related Disorders* 4(1): 1-2, 1993 [See Appendix A] ..... 12

## ETS EXPOSURE AND MONITORING

- [36] "Analysis of Tobacco-Specific N-Nitrosamines in Indoor Air," K.D. Brunneemann,  
J.E. Cox, and D. Hoffmann, *Carcinogenesis* 13(12): 2415-2418, 1992 [See Appendix A] ..... 12
- [37] "Relationship Between Environmental Tobacco Smoke Exposure and  
Carcinogen-Hemoglobin Adduct Levels in Nonsmokers," S.K. Hammond,  
J. Coughlin, P.H. Gann, M. Paul, K. Taghizadeh, P.L. Skipper, and S.R. Tannenbaum,  
*Journal of the National Cancer Institute* 85(6): 474-478, 1993 [See Appendix A] ..... 12
- [38] ♦ "Environmental Tobacco Smoke," A. Rodgman, *Regulatory Toxicology and  
Pharmacology* 16: 223-244, 1992 [See Appendix A] ..... 12

## INDOOR AIR QUALITY

- [39] "The Effect of Varying Levels of Outdoor-Air Supply on the Symptoms of Sick Building  
Syndrome," R. Menzies, R. Tamblyn, J.P. Farant, J. Hanley, F. Nunes, and R. Tamblyn,  
*The New England Journal of Medicine* 328(12): 821-827, 1993 [See Appendix A] ..... 13
- [40] "The Sick Building Syndrome In Office Buildings — A Breath of Fresh Air," K. Kreiss,  
*The New England Journal of Medicine* 328(12): 877-878, 1993 [See Appendix A] ..... 13

## SMOKING POLICIES AND RELATED ISSUES

- [41] Letters to the Editor Regarding "Protection from Environmental Tobacco Smoke  
in California: The Case for a Smoke-Free Workplace," R. Borland, J.P. Pierce,  
D.M. Burns, E. Gilpin, M. Johnson, and D. Bal, *Journal of the American  
Medical Association* 268(6): 749-752, 1992 ..... 13

## IN EUROPE &amp; AROUND THE WORLD

## REGULATORY AND LEGISLATIVE MATTERS

AUSTRALIA	
[42]	New South Wales Delays Public Smoking Ban ..... 13
[43]	Total Smoking Ban Not on Government's Agenda ..... 14
AUSTRIA	
[44]	Anti-Smoking Bill Drafted ..... 14
CANADA	
[45]	Ontario Government Conducts Hearings on Smoking Proposals ..... 14
[46]	Cigarette Package Warnings May Include ETS Message ..... 14
GERMANY	
[47]	Anti-Smoking Activists Draft Legislation ..... 14
INDIA	
[48]	Government Considers Smoking Bans ..... 14
ISRAEL	
[49]	Health Ministry Officials Unprepared to Discuss Workplace Smoking Policies ..... 15
PHILIPPINES	
[50]	Smoking Restrictions Imposed in Manila ..... 15
UNITED KINGDOM	
[51]	Home Secretary Squelches Attempt to Impose Smoking Ban ..... 15
[52]	Smoking Bans Considered by Numerous Borough Councils ..... 15

## ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

UNITED KINGDOM	
[53]	<i>Wright v. Ladbrokes</i> (Industrial Tribunal, Birmingham, England) (filed December 20, 1991) ..... 15

## LEGAL ISSUES AND DEVELOPMENTS

UNITED KINGDOM	
[54]	"The Smokeless Zone," V. Harpwood, <i>Occupational Health Review</i> , March/April 1993 ..... 16
[55]	Adoption Agencies Advised Not to Place Children With Smokers ..... 16

## OTHER DEVELOPMENTS

EUROPEAN COMMUNITY	
[56]	◆Cigarette Confederation Publishes ETS Pamphlet ..... 16
UNITED KINGDOM	
[57]	◆Symposium on Workplace Smoking Held in Glasgow ..... 16
[58]	Union Employees Oppose Complete Smoking Ban ..... 17
[59]	Schools Advised to Provide Smoke-free Environment ..... 17
[60]	Pub Owners Refuse to Ban Smoking ..... 17
[61]	Study Links Child Snoring to ETS ..... 17
WORLD AIRLINE NEWS	
[62]	Bahrain ..... 17
[63]	Iceland ..... 17
[64]	Scandinavia ..... 18
[65]	Switzerland ..... 18
[66]	United Kingdom ..... 18

## MEDIA COVERAGE

AUSTRALIA	
[67]	"Federal Court Warns Tobacco Institute Over Brochure," <i>The Australian Financial Review</i> , March 11, 1993 ..... 18
[68]	"Passive Smoking Danger Admitted," M. Date, <i>The Sydney Morning Herald</i> , February 26, 1993 ..... 18
UNITED KINGDOM	
[69]	◆"Passive Smoking Landmark," <i>Health and Safety Information Bulletin</i> 207, March 1993 .... 18
[70]	"Smokers Forced Me To Quit Job, Says Clerk," A. Sambidge, <i>Western Daily Press</i> , February 20, 1993 ..... 19
[71]	"Attitudes to Smoking," P. Madge, <i>The Safety &amp; Health Practitioner</i> , March 1993 ..... 19

APPENDIX A .....	Article Summaries
APPENDIX B .....	ASH Pamphlet
APPENDIX C .....	Minnesota Attorney General Letter

## REPORT ON RECENT ETS AND IAQ DEVELOPMENTS

### IN THE UNITED STATES REGULATORY AND LEGISLATIVE MATTERS CONGRESS

#### [1] ♦Indoor Air Quality Act of 1993 Introduced in Senate

On March 25, 1993, Senator George Mitchell (D-Me.) introduced the Indoor Air Quality Act of 1993 (S. 656). Relying in part upon the EPA Risk Assessment on ETS, Mitchell asserted that indoor air contains pollutants such as "tobacco smoke" and that the federal government lacks a coordinated and comprehensive response to "all the evidence of the health effects and economic costs of indoor air pollution." The bill is virtually identical to measures introduced and passed by the Senate in the 101st and 102d Congress. It would require the appropriation of \$48.5 million for each fiscal year from 1992 to 1996.

As of this writing, a companion bill had not been introduced in the House. However, recent press reports indicate that such a bill is being prepared by Representative Joseph Kennedy II (D-Mass.) and will be introduced soon. See issue 43 of this Report, March 19, 1993.

The Senate bill does not identify ETS as an indoor air contaminant. It does, however, contain provisions that would require the EPA to publish a list designating "the contaminants that may occur or are known to occur in indoor air at levels which may reasonably be expected to have an adverse impact on human health." Provisions expanding and strengthening indoor air research predominate, and the EPA is authorized to work with federal agencies, industry groups and the states in improving technologies to identify sources of poor IAQ, measure health effects, and mitigate poor IAQ. An Office of Indoor Air Quality would be established at the EPA to oversee the IAQ program, which would also include the publication of informational bulletins.

Although ventilation is addressed in the bill, it plays a minor part. Essentially, the EPA would be required to assess the current use and effectiveness of ASHRAE standards and recommend to Congress those standards that would best protect the public health in light of energy conservation goals. A number of federal agencies are given responsibilities under the proposal. NIOSH, GSA and the EPA, for example, would be required to develop an indoor air training course on HVAC operation and maintenance, recordkeeping, identification of indoor air pollutant sources, and remediation measures.

Senator John Chaffee (R-RI) cosponsored the measure, and it has been referred to the Committee on Environment and Public Works. Also introduced on March 25 was the Indoor Radon Abatement Act which addresses the alleged health effects of radon gas exposure in homes and schools (S. 657).

### U.S. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

#### [2] *AFL-CIO v. OSHA*: OSHA allows Time for Appeal to Expire

The Clinton administration has apparently declined to appeal a federal appeals court decision that invalidated OSHA's occupational air quality standards for some 428 substances involved in the construction, agriculture and maritime industries. The time for appeal expired on March 22, 1993. *AFL-CIO v. OSHA* (U.S. Court of Appeals, Eleventh Circuit) (decided July 7, 1992; rehearing denied October 22, 1992).

The appeals court ruled that OSHA could address multiple substances in a single rulemaking, but that it had not adequately quantified the risks associated with individual substances, had failed to establish industry-specific technological or economical feasibility of the individual permissible exposure limits, and had not adequately supported its across-the-board 4-year delay in implementation of the standard.

According to press reports, it was unclear whether the Labor Department's failure to appeal was a tactical decision or whether the case "may have fallen through the cracks." Labor Department sources reportedly said that Secretary Robert Reich had recommended the case be appealed.

It is anticipated that the outcome of the case will have an impact upon efforts currently underway in Congress to redraw federal job safety laws. Representative William Ford (D-Mich.), sponsor of the House version of OSHA reform legislation, H.R. 1280, reportedly suggested that the court's decision should spur Congress to enact OSHA reform promptly. *See The Washington Post*, March 23, 1993; *St. Louis Post Dispatch*, March 24, 1993. H.R. 1280, as well as the Senate OSHA Reform bill, S. 575, would legislatively vacate the Eleventh Circuit's decision by directing OSHA to issue an interim final regulation giving effect to the proposed exposure limits for the 428 substances.

► Summaries of reactions to OSHA Reform legislation, Item 5.

### [3] Workplace IAQ/ETS Rules Stalled by Vacant Position

According to press reports, the process of establishing workplace rules on IAQ and ETS is in limbo at OSHA because an assistant secretary in charge of OSHA has not yet been appointed. Apparently, the assistant secretary will be in a position to indicate what policy the new administration wishes OSHA to follow on these issues. According to OSHA's project officer on indoor air and ETS, it is unlikely that OSHA will issue an emergency temporary standard on ETS in response to the latest petition filed by Public Citizen. *See* issue 41 of this Report, February 19, 1993. OSHA's reluctance to do so stems, in part, from its failure to prevail in any court action in which other emergency temporary standards have been challenged. *See Indoor Air Quality Update*, March 1993.

### [4] *ASH v. Department of Labor*: Parties Disagree About Whether to Delay Case

On February 16, 1993, ASH requested that the court hold this case in abeyance for 60 days in light of the January 1993 memorandum from then-Secretary of Labor Lynn Martin directing the agency to expeditiously report to the incoming Secretary regarding

workplace ETS rulemaking options. *ASH v. Department of Labor* (U.S. Court of Appeals, D.C. Circuit) (filed December 22, 1992).

In its motion to the court ASH states, "petitioner believes the public interest would best be served by holding the case in abeyance for 60 days to determine if OSHA will proceed to resolve this matter without the necessity of Court intervention." In the alternative, ASH requests 10 additional days to respond to the Secretary's motion to dismiss.

In this case, ASH is seeking an order compelling OSHA to commence a separate rulemaking on ETS.

In a response filed to ASH's motion, Labor Secretary William Reich objected to the request to hold the case in abeyance and reiterated the agency's position that the case should be dismissed because there was no final agency action to review. According to the Secretary, ASH's latest motion was a concession that "OSHA is presently considering the precise regulatory relief [ASH] seeks and that allowing the agency an additional period of time to decide the issue is appropriate and reasonable." The Secretary does not object to the 60-day period requested by ASH should the court grant ASH's motion to hold the case in abeyance, but notes in that regard, "the Secretary makes no representation that the issue whether and how to proceed with the regulation of ETS will be fully resolved within that period."

On March 6, 1993, ASH filed a reply to the Secretary's response, arguing that OSHA's opposition to its motion "reinforces the finality of the Agency's decision." ASH reiterates many of the arguments made in its initial pleadings with the court and urges the court to either hold the case in abeyance or deny the motion to dismiss and issue a briefing schedule. To date, no further documents have been filed in the case.

### [5] OSHA Reform Legislation Garners Criticism and Support

The introduction of OSHA reform legislation in the House and Senate (H.R. 1280, S. 575), has provoked mixed responses from representatives of employee and business groups and others around the country. A summary of reported comments on the measures follows.

- AFL-CIO: Margaret Seminario, director of the department of occupational safety and health, supports

2046361343

the reform legislation, saying "if enacted, it will lay the groundwork for improvements in safety and health."

- Coalition for Occupational Safety and Health (an coalition of employers, trade groups and associations): Peter Lunnie, executive director, agrees that the Occupational Safety and Health Act of 1970 is not perfect, but says "radical reform of the statute" is not warranted. He believes the reform measures "would change its character from one of encouraging voluntary compliance on the part of employers and employees alike to a criminal statute."

- American Society of Safety Engineers: Allen Macenski, acting president, criticizes the reform measures and says OSHA errs in applying the same standard to every business. "It is ludicrous to require small employers to have written programs and joint labor-management committees," Macenski says.

- Employment Policy Foundation (Washington, D.C.-based business research group): The Foundation estimates that the legislation will cost the private sector \$51 billion in new costs each year even after factoring out the cost savings from averted illnesses and accidents.

- Academia: Eula Bingham, former head of OSHA during the Carter administration, does not see a groundswell of support for OSHA reform. Her research shows that part of the problem is that when good jobs are scarce, "workers are afraid to complain because they really need the job."

- OSHA insiders: Without an OSHA chief, no one is apparently setting goals and priorities. Secretary of Labor Robert Reich is reportedly spending most of his time helping President Clinton push his economic plan.

- New York Committee on Occupational Safety and Health (union-funded research and education group): Joel Shufro, executive director, has "great expectations" with respect to OSHA reform, but regards the failure of the President to appoint someone to head the agency as a significant drawback. See *Newsday*, March 21, 1993.

Meanwhile, Republicans in Congress are reportedly preparing their alternative to the Democrat-backed reform measure and hope to introduce it before hearings are scheduled on the proposal this spring. According to a minority staffer for the House Education and Labor Committee, the sponsor of the House measure wants the bill considered in August, but many

congressional representatives believe it will take two years for the bill to reach both floors. See *Daily Report for Executives*, March 25, 1993.

## IAQ MODEL LAW TASK FORCE

### [6] Task Force Continues Work on Model Law

On March 11, 1993, the IAQ Model Law Task Force met to form a new subpanel charged with devising a "conceptual outline" of a new draft model IAQ law by April 2, 1993. The draft law that had been circulated to panel members late in 1992 has apparently been scrapped following extensive criticism. See issue 37 of this Report, December 18, 1992. Organizations that have expressed an interest in or have been participating in the drafting process will receive copies of the outline and will have the opportunity to submit written comments until April 14, 1993. The next meeting of the full panel will be held in Washington, D.C. on April 19, 1993. It is anticipated that an approved outline will be presented at an IAQ conference in Baltimore on April 22.

The IAQ Model Law Task Force, under the aegis of the Environmental Safety Council of American (ESCA), a private council of individuals claiming representation of business and consumer interests, intends to draft a model law that will be made available as a guide for state, county and municipal lawmakers.

Meanwhile, the executive director of the American Industrial Hygiene Association (AIHA) has reportedly withdrawn the organization's support from the Task Force endeavor. In a letter written to ESCA, Director O. Gordon Banks reportedly said AIHA originally agreed to become involved because the group was under the impression that the model law would provide a consensus of scientific evidence that the states could use in formulating IAQ regulations. According to Banks, the model law unveiled at ASHRAE's IAQ '92 seminar in San Francisco did not reflect the recommendations of the scientific task force. Although AIHA is officially dissociating itself from ESCA and the Task Force, it will evidently continue to comment on any future model law activity. See *Indoor Air Quality Update*, March 1993.



## U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)

### [7] Results of School Radon Survey Reported to Congress

On March 18, 1993, the EPA reportedly advised the House Energy and Commerce Committee's panel on health and the environment that radon levels in one of every five public schools in the U.S. exceed the EPA's safety standard. Apparently, the EPA study was based upon an examination of 900 randomly-selected schools and projects that more than 70,000 classrooms in 15,000 schools have high levels of radon. According to the study, students in approximately 10,000 classrooms are exposed to radiation levels higher than those to which nuclear power plant employees are exposed. About 11 million students, the survey concludes, are exposed to radon levels that may present a health problem.

According to Margo Oge, director of EPA's Office of Radiation and Indoor Air, readings should be taken in first-floor classrooms in every public school. She blamed poor IAQ in schools for posing a threat to children's health and reportedly estimated that most schools could solve their radon problems by taking steps that cost between \$3,000 and \$30,000.

Representative Henry Waxman (D-Cal.), chair of the House subcommittee considering the EPA survey, cautioned parents and teachers not to panic. "Radon causes lung cancer only after years of exposure," Waxman was quoted as saying. His subcommittee is apparently preparing to draft legislation that will address the alleged radon hazard. See *Los Angeles Times*, March 19, 1993.

## ASHRAE

### [8] Critics Charge ASHRAE Standards Reflect Business Interests

ASHRAE, whose indoor ventilation and thermal standards serve as industry guidelines in the absence of IAQ legislation, has reportedly come under attack by unions and public interest activists who are skeptical of standards set by the private sector. Although ASHRAE standards undergo public review before they are finalized, consumer interests, say critics, are rarely represented on the technical and project committees

that draft and revise the standards in light of the comments received. According to the president of an Ohio corporation that recently became involved in the standard setting process for air filters, "the committee setting is controlled by a typical political process. If most [large] manufacturers apply for membership, the documents will unduly reflect their interests." See *Indoor Air Review*, March 1993.

## STATE AND LOCAL GOVERNMENTS

### [9] Privacy Legislation

On March 29, 1993, Virginia Governor L. Douglas Wilder (D) vetoed a bill that would have prohibited employers from discriminating against any person who uses tobacco products outside of employment. The bill also would have prohibited employers from requiring, as a condition of employment, employees to use tobacco products on the job. See S.B. 859, Regular Session (1992-93).

In Pennsylvania, a bill was introduced on March 23 that would prohibit discrimination against persons who use lawful products. See H.B. 956, 176th General Assembly - Reg. Sess. (1993-94).

In Massachusetts, a bill was introduced on January 6 that would prohibit employers from requiring as a condition of employment that any employee refrain from smoking or using tobacco outside the workplace or from discriminating against any individual with respect to employment for such activity. See H.B. 1221, 178th General Court - Reg. Sess. (1993).

There are, for purposes of this Report, three types of privacy legislation. They provide protection for those who (i) engage in lawful activities, (ii) use lawful products, and (iii) use tobacco products. Bills that would prohibit discrimination against employees who use legal products in a legal manner are under consideration in three states in addition to Pennsylvania, Alaska, Idaho, Iowa, Montana and Nebraska. Bills that would prohibit discrimination against employees who engage in lawful activities away from the workplace are pending in six states: Florida, Hawaii, Iowa, Kansas, North Dakota and Washington. Bills that would prohibit employers from discriminating against employees who use tobacco products specifically are pending in three states: Alabama, Massachusetts and Pennsylvania.

2046361345

## [10] ETS-Related State and Local Legislative Activities

Because of space limitations, the following discussion reflects only a portion of the state and local legislative activity related to ETS. The fax communication sheet at the end of this Report may be used to request information about ETS-related legislation not appearing here.

### • California

On March 1, 1993, a bill was introduced that would prohibit smoking at any time inside any building owned, leased, or occupied by the legislature. Another bill, introduced February 22, 1993, would authorize a city or county to enforce its ordinance regulating the smoking of tobacco in a private residence licensed as a family day care home during its hours of operation and in those areas of the facility where children are present. The bill prohibits the smoking of tobacco on the premises of a child day care center. *See* A.C.R. 27 and A.B. 615, Regular Session (1993-94).

### • Local Governments in California

According to a news report, the San Mateo City Council approved a smoking ban in businesses and restaurants that prohibits smoking in bar areas of restaurants where there is no barrier between diners and bar patrons. An earlier version of the measure would have apparently forced bars to reserve half of their seating for nonsmokers and would have prohibited smoking in private banquet rooms in restaurants. Both provisions were removed. *See The San Francisco Chronicle*, March 16, 1993.

The Sausalito City Council postponed voting on an ordinance that would have prohibited smoking in all public places, including bars and outdoor restaurants. According to a news report, bar and restaurant owners opposed the ordinance and claimed they would fight it. *See The San Francisco Chronicle*, March 18, 1993.

### • Illinois

On March 10, 1993, a bill was introduced that would prohibit smoking in elementary and secondary schools, municipal teen centers, and all licensed day care facilities. *See* S.B. 985, 88th General Assembly - Reg. Sess. (1993-94).

Several other bills relating to banning smoking in day care facilities have been introduced. *See* H.B. 1617, H.B. 1540, and S.B. 693. Other bills have been introduced that would prohibit smoking areas in restaurants and would guarantee a smoke-free workplace. *See* H.B. 1988 and H.B. 1152.

### ◆ New Jersey

According to a news report, the New Jersey Assembly Environment Committee has stopped a measure that would ban smoking in all restaurants. According to the report, an Assemblywoman said that legislation was necessary because children and nonsmokers frequent restaurants, and because the ETS Risk Assessment found that ETS is reported to be "dangerous." *See United Press International*, March 22, 1993.

### ◆ Ohio

According to a news report, the Akron City Council passed a comprehensive smoking ban prohibiting smoking in any city-owned building or vehicle. Mayor Donald Plusquellic was reported to refer to the recent EPA Risk Assessment on ETS when he said that the city had an obligation to protect its workers' health and to insulate the city from lawsuits that could be filed by people who say they contracted lung cancer from City Hall smoke. Also under consideration is a smoking ban in Summit County's main office building and in the County Jail. Under the measure, prisoners at the jail would be allowed to smoke only in the outdoor exercise area. *See The Plain Dealer*, March 19, 1993.

### • Pennsylvania

According to news reports, on March 22, 1993, a bill was introduced that would ban smoking in workplaces, indoor public places and some outdoor facilities. *See Gannett News Service*, March 23, 1993, and *United Press International*, March 22, 1993.

### • Rhode Island

On March 18, 1993, a bill passed the House and was sent to the Senate that would prohibit smoking in hallways of elderly housing complexes. Another bill was introduced on February 24, 1993, that would ban smoking in restaurants. *See* H.B. 6748 and H.B. 6715, Regular Session (1993).

### ◆ Local Governments in Texas

According to a news article, the Arlington City Council is considering an ordinance that would ban smoking in the workplace. According to the news report, the city council member proposing the ordinance said that the recent EPA Risk Assessment on ETS prompted him to push for the new restrictions. Also, employers could not "discriminate, discharge, or in any other manner retaliate against any employee exercising a right created by this ordinance," a draft of the ordinance was reported to say. *See The Dallas Morning News*, March 11, 1993.

### • Utah

Governor Mike Leavitt (R) has recently acted on three bills. On March 15, 1993, the governor signed a bill that provides for procedures regarding permitting smoking areas. He also signed a bill that prohibits smoking in public school buildings or facilities or on property on which those facilities are located. The bill provides for designated smoking areas for adults during non-school hours in private schools. See H.B. 53 and H.B. 136. On March 23, 1993, Leavitt vetoed a bill that would have required business establishments with smoking areas to provide information regarding the alleged health hazards of tobacco smoke to employees exposed to ETS. See S.B. 67, 50th Legislature - General Session (1993).

## ETS-RELATED LITIGATION AGAINST CIGARETTE MANUFACTURERS

### [11] *Broin*: Defendants File Brief on Class Action Appeal

On March 29, 1993, defendants filed their brief in opposition to plaintiffs' appeal of the trial court's order dismissing the class action allegations of plaintiffs' complaint. If plaintiffs choose to file a reply brief, the brief would be due on April 19th.

In proceedings in the trial court, defendants filed a motion to compel discovery of plaintiffs' medical records. The motion has been set for hearing on April 20.

At issue in this case are the claims of 30 flight attendants allegedly injured by occupational exposure to ETS. In addition, the husband of one of the flight attendants claims loss of consortium. The 30 attendants purport to represent a class of approximately 60,000 other attendants.

The injuries alleged by the putative class representatives include lung cancer, breast cancer and unspecified respiratory ailments. Plaintiffs further allege that occupational exposure to ETS on board aircraft causes at least 22 diseases and a reasonable fear of contracting such diseases. The defendants are purported to be the six major U.S. cigarette manufacturers (plus related entities), UST, Inc., United States Tobacco Co., Dosal Tobacco Corp., the Council for Tobacco Research, The Tobacco Institute,

and three other trade associations. *Broin, et al. v. Philip Morris, et al.* (Circuit Court, Dade County, Florida) (filed October 31, 1991).

### [12] *Butler*: Trial Court Sets Case for November 1993

Plaintiffs' counsel unilaterally scheduled this case for trial on November 29, 1993. Defendants have filed a motion to set aside the trial date, hold a scheduling conference and enter a scheduling order setting deadlines for discovery and other matters. In the motion, defendants propose a discovery deadline of August 1, 1994, and a pretrial conference on October 1, 1994.

Plaintiffs have since filed a series of motions and scheduled all of them for hearing on April 21. Among other matters, the motions request the following relief:

1. An order compelling discovery;
2. Leave to file a second amended complaint, which would include additional claims of fraud and conspiracy; and
3. An order scheduling a discovery conference. Plaintiffs propose that the court retain the November 1993 trial date, establish a deadline for designating expert witnesses of July 28, 1993, and establish a deadline for all discovery of October 28, 1993.

In this case, Burl Butler alleges that he has lung cancer and other injuries caused by exposure to ETS in the barber shop he has owned and operated for approximately 30 years. His wife, Dean, claims loss of consortium and emotional distress. The defendants are the six major U.S. cigarette manufacturers and four tobacco wholesalers. *Butler v. R.J. Reynolds Tobacco Co., et al.* (Circuit Court, First Judicial District, Hinds County, Mississippi) (filed October 21, 1992).

### [13] ♦ *McKinney*: Prisoner Files Suit Against Manufacturers

With an ETS-related civil rights claim against prison officials already pending in the U.S. Supreme Court, Nevada prisoner William McKinney has filed a second ETS case naming cigarette manufacturers as defendants.

The cigarette manufacturers named in plaintiff's complaint include R.J. Reynolds and Brown & Williamson. McKinney's primary allegation against these defendants is that they failed to warn about the

2046361347

alleged health effects of ETS exposure. McKinney also alleges that "toxic smoke . . . has now been classified as a Class "A" carcinogen by the Environmental Protection Agency."

As in the civil rights case, which has been pending in the federal court system for more than five years, McKinney's statement of injuries in the newly-filed lawsuit is fairly general. He claims emotional pain, mental anguish, severe headaches, constant nose bleeds, itchy and watery eyes, nasal mucus discharge, and recurring chest pains due to ETS exposure. *McKinney v. C.M. Products, Inc., et al.* (District Court, White Pine County, Nevada) (filed March 3, 1993).

In the civil rights case, briefing and oral argument is complete, and the Supreme Court could issue its decision at any time.

In contrast to the new lawsuit he has filed, McKinney recently was quoted by a newspaper as saying that he would file suit on behalf of smokers if his civil rights case results in a smoking ban in prisons. See issue 42 of this Report, March 5, 1993.

#### [14] *Zwillman*: Court Grants Defendants' Dispositive Motions

On March 22, 1993, the court granted all three of defendants' dispositive motions, permanently dismissing The Tobacco Institute and the Council for Tobacco Research from the case and giving plaintiff leave to reassert some of its claims against the two other defendants, Brooke Group, Ltd., and The American Tobacco Company. The order can be broken down into three parts.

First, the court ruled that all of plaintiffs' claims against The Tobacco Institute and the Council for Tobacco Research were time barred. "TI and CTR shall not be named as defendants" in plaintiffs' next amended complaint, the court ordered.

Second, the court also dismissed as time-barred all personal injury-survival claims made on behalf of Mrs. Zwillman, all loss of consortium claims by Mr. Zwillman, and all infliction of distress claims made by Mr. Zwillman. Like the dismissal of claims against TI and CTR, the court's dismissal of these claims was with prejudice.

Third, based on the New Jersey Products Liability Law and the U.S. Supreme Court's preemption decision in

*Cipollone*, the court dismissed without prejudice plaintiff's remaining claims against American and Brooke Group. Plaintiff was given 45 days to refile an amended complaint which complies with those two authorities.

This originally was a smoking-and-health case filed by Wolf Zwillman for himself and as the personal representative of his wife, Marjorie, a smoker who allegedly died in 1989 of lung cancer. ETS claims were added in an amended complaint. Based on the allegations in the current complaint and a trial court memorandum, the theory of plaintiff's case appears to be that Marjorie Zwillman's lung cancer was caused by her own smoking as well as the ETS from cigarettes smoked by herself and others. Plaintiff asserts that his ETS claims should be governed by environmental and toxic tort law rather than products liability law. *Zwillman v. Brooke Group Ltd., et al.* (U.S. District Court, New Jersey) (filed February 15, 1991; second amended complaint adding ETS claims filed February 13, 1992). Brooke Group is the successor corporation to Liggett & Myers.

#### ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

##### WORKPLACE: IAQ/SICK BUILDING SYNDROME

- [15] *Bensing v. Voith & Mactavish* (Philadelphia County Court of Common Pleas, Pennsylvania) (filed February 3, 1993); *Skoogfors v. Voith & Mactavish* (Philadelphia County Court of Common Pleas, Pennsylvania) (filed January 21, 1993)

These actions, alleging injuries due to exposure to toxic substances, have been filed against three contractors involved in the renovation of a library building on the Bryn Mawr College campus near Philadelphia. See issue 43 of this Report, March 19, 1993. The substances involved include limestone wash, lacquer, lacquer thinner, latex coating, floor stain, oil stain, paint remover, alkyd sealer, oil base varnish, varnish, paint, bronzing powder and other solvents.

As a result of the defendants' alleged negligence in failing to provide warnings or properly ventilate the areas in which they were working, employees Allyn Bensing and Anne Skoogfors claim they suffer from,

among other things, headaches, swollen and bleeding gums, shortness of breath, extreme sinus pain and discomfort, slurred speech, coordination problems, insomnia, increased risk of contracting cancer, other physical and emotional pain, mental anxiety, anguish, annoyance, inconvenience, humiliation, embarrassment, and an incapacity to perform her usual daily activities. Both husbands join the complaints with loss of consortium claims. The Bensings and Skoogfors each seek compensatory damages in excess of \$50,000 on each count and punitive damages in excess of \$50,000.

Plaintiffs in both actions are represented by Arthur Hankin of Bolger, Picker, Hankin & Tannenbaum.

### COLLECTIVE BARGAINING

- [16] *United Paperworkers International Union, Local 1279 v. Wisconsin Tissue Mills, Inc.*, 1993 U.S. Dist. LEXIS 3348 (U.S. District Court, Eastern District, Wisconsin) (decided March 13, 1993)

A U.S. District Court judge has ruled that a grievance filed over a unilateral workplace smoking policy must be submitted to arbitration. The case arose when Wisconsin Tissue Mills designated certain areas in its plant as nonsmoking in 1990. The union claimed that this was a violation of its collective bargaining agreement. Reconciling procedural rules about exhaustion of procedures and preconditions to suit, the court granted the union's motion for summary judgment and ordered submission of the grievance over the smoking policy to arbitration.

### LEGAL ISSUES AND DEVELOPMENTS

- [17] ♦ASH Produces New Antismoking Pamphlet

Citing the EPA Risk Assessment on ETS, ASH has prepared a new pamphlet proclaiming that businesses are now "on legal notice of the many dangers of secondhand smoke to workers, customers, and other visitors." A copy of the pamphlet is attached as Appendix B. The cover of the pamphlet carries the term "legal notice" in large print and warns that "tobacco smoke is hazardous to the health of nonsmokers, and can cause death and disability from cancer and heart disease." Quotations from news sources and business interests about the risk assessment are included in the

pamphlet, and ASH provides a list of legal actions individuals can take to recover damages for injuries allegedly caused by exposure to "enormous concentrations of smoke."

- [18] ♦Minnesota Attorney General Opines About Effect of Risk Assessment in the Workplace

The EPA Risk Assessment on ETS "does not, per se, place a new liability on employers which did not exist before," but it could serve as the basis for regulating workplace smoking, and it might help employees prove a causal relationship between workplace exposure to ETS and an alleged injury, according to an opinion letter issued last month by the Minnesota Attorney General's office. The letter had been requested by a representative of the Minnesota House. A copy of the letter is attached as Appendix C.

The letter implies that the evolving definition of "occupational disease" under Minnesota's workers compensation law would have to be extended to include injuries allegedly caused by ETS exposure. The attorney general's office is unaware of any Minnesota cases in which a claimant was awarded benefits because of ETS exposure, the letter states. "The potential for such cases in the future, however, certainly exists."

The letter closes by asserting that "there are steps an employer can take to minimize future potential liability, which steps could include banning or restricting all smoking at the workplace. Neither federal nor state law would appear to prevent an employer from banning smoking in the workplace or from taking other reasonable steps to assure that other employees are not exposed to second-hand smoke."

### U.S. INCIDENTS OF SBS/BRI

- [19] Sick Building Syndrome/Building-Related Illness in Florida, Massachusetts, Missouri and New York

♦ J.D. Floyd Elementary, Spring Hill, Florida  
After health complaints from teachers and students were reportedly registered beginning in the fall of 1992, extensive IAQ testing was conducted on Floyd Elementary School. A parents group calling themselves

2046361349

the Hernando Environmental Action Team (HEAT) has formed to gather information on the problem and to demand action by the school board.

Although the complaints continue to persist, the IAQ tests have apparently not revealed the source of the problem. The school has tried a number of remedies, including cleaning the HVAC system and stripping carpets. At least a dozen teachers have been tested in the hope of finding a common allergen; those tests were inconclusive. Additional IAQ testing has been ordered. *See St. Petersburg Times*, June 10 and 26, 1992.

• **Rowes Wharf Office Highrise, Boston, Massachusetts**

A Boston law firm reportedly claims poor IAQ in its office space in a ritzy high-rise is causing illness among office workers. The law firm says it commissioned IAQ testing and results indicate the problem is the building's ventilation system. The building's developer/manager says it hired Anderson Laboratories to conduct tests on the carpet the firm had installed and that fumes from the carpet is the culprit. The law firm reportedly says it will break its lease and move out; the building managers say they will sue. *See Boston Globe*, February 4, 1993.

• **Dixon Elementary School, Dixon, Missouri**

Teachers and students reportedly began breaking out in unexplained skin rashes while at school. Those who were affected reported that the symptoms went away after leaving the school. Officials closed the school to investigate but were never able to identify a specific cause. They did find high dust levels, lack of ventilation and dead birds in the ceiling. The school was thoroughly cleaned and aired out and the rashes have now reportedly disappeared. *See Kansas City Star*, March 10, 1993.

• **Roswell Park Cancer Institute, Buffalo, New York**

*Aspergillus* bacteria has reportedly caused infection among seven patients, two of whom have died. The institute had a similar outbreak in 1983 which was blamed on its ventilation system. In that instance, 10 patients died and four families sued and won judgments, claiming the state failed to make repairs even though it knew the system was defective. In the most recent instance, the hospital claims a patient was infected with the bacteria prior to being admitted to the hospital. *See The Buffalo News*, January 25, 1993.

• **Legislative Office Building (LOB), Albany, New York**

In a building being dubbed the "L.O.B.-gionnaire's disease," legislators and staffers have been complaining for months about poor IAQ. They claim to see black smudges beneath ventilation ducts, say there is no air in the building and that they have health problems as a result. Following health department inspections the Office of General Services failed to adopt any of the recommendations for improvement. In response, some legislators say they plan to introduce IAQ legislation that would require, among other things, more stringent enforcement of IAQ laws. *See Newsday*, December 30, 1992.

• **New York Schools**

The New York Committee for Occupational Safety and Health (NYCOSH) has reportedly received hundreds of complaints from school employees about indoor air quality. NYCOSH says it has conducted tests on several schools and found a wide range of problems, including: (i) lack of fresh air; (ii) improperly designed and/or maintained ventilation systems; and (iii) inadequate temperature and humidity controls. The state school board association says it is unaware of any widespread IAQ problems in New York schools even though teachers' union officials say as many as half may qualify as "sick," causing health problems for teachers and students. *See Newsday*, March 8 and 16, 1993.

---

## OTHER DEVELOPMENTS

[20] **State to Provide Employees with Smoking Shelters**

According to press reports, the state of New York plans to build shelters for smokers at a cost of \$50,000 each at its Taxation and Finance Department offices in Albany. Apparently, the smoking ban that is in effect in state office buildings is being ignored by smokers, and nonsmokers have been complaining about the violations and the clouds of smoke and litter near entrances where smokers congregate. *See The New York Times*, March 23, 1993.

[21] **Centers for Disease Control (CDC) Launches ETS Information Campaign**

The CDC has reportedly instituted a nationwide campaign to warn people about the alleged dangers of

ETS exposure and to suggest methods to prevent exposure. The campaign, which is being conducted through print and television public service announcements, provides information from the EPA regarding purported ill health effects of ETS on children. The messages apparently contain a toll-free hotline which can be used to obtain a free action guide on ETS and other information. *See The Dallas Morning News*, March 25, 1993.

**[22] Survey Asks About Smoking and Children**

Forty-five percent of those surveyed in Pennsylvania reportedly say they think smoking in the presence of an infant constitutes a form of child abuse. Sixty-one percent said they think children should not be allowed to be seated in the smoking section of a restaurant. The survey, released by the Rural Services Institute at Mansfield University, reportedly polled 1,690 Pennsylvanians. *See United Press International*, March 22, 1993.

**[23] Large Increase in Corporate Smoking Bans Predicted**

According to a health consultant based in Maryland who regularly surveys Fortune's Industrial 100 and large diversified service companies regarding their smoking policies, many are expected this year to join those already banning smoking inside their facilities. Some one third of the Industrial 100 and half of the service companies surveyed have adopted smoking bans.

Employers such as PepsiCo, Federal Express, Du Pont, US West and Ralston Purina currently ban smoking indoors, and Merck, a New Jersey-based drugmaker, reportedly bans smoking anywhere on the property. Washington, D.C. telecommunications company Comsat apparently reduced the number of smokers in its employ from 25 percent to 10 percent by charging smokers double what nonsmokers are charged for health insurance. *See Fortune*, March 22, 1993.

**[24] ♦Children Advised to Change Parents' Smoking Habits**

In a question and answer column appearing in a Houston newspaper, a child who wrote to ask if ETS exposure was hazardous was answered with a referral to the EPA Risk Assessment on ETS. The answer further advised the child to provide the parents with informa-

tion about the alleged hazards of ETS and ask older relatives or a doctor to speak to the parents about the problem. The child was also advised to ask the parents to smoke outdoors if they cannot quit or to smoke in a separate room with the door closed. *See The Houston Chronicle*, March 25, 1993.

---

**MEDIA COVERAGE**

**[25] ♦"EPA Study on Passive Smoking Stirs Debate and Passions," R. Brownson, *The San Francisco Chronicle*, March 19, 1993**

Ross Brownson, author of this opinion piece, discusses the EPA Risk Assessment on ETS and dismisses criticisms regarding the reliability of epidemiologic studies by stating, "A modicum of uncertainty on a scientific level cannot justify inaction when it comes to protecting the public's health." Evidently, the commentator believes that smoking should be banned in workplaces, public places, restaurants and anywhere children may be exposed to ETS. He concludes that "smokers should be given the opportunity to smoke as long as it does not endanger the health of nonsmokers and children."

Brownson principally authored a study entitled, "Passive Smoking and Lung Cancer in Nonsmoking Women," (*American Journal of Public Health* 82(11): 1525-1530, 1992), which reported no statistically significant risk estimates based on "quantitative" exposure estimates of childhood ETS exposure, household exposure, spousal smoking or workplace exposure. *See issue 35 of this Report*, November 20, 1992.

**[26] ♦"Don't Mind if I Smoke," T. McNichol, *USA Weekend*, March 28, 1993**

In this article, Dave Brenton, editor of the United Smokers Association quarterly, is interviewed and asked about his response to the EPA Risk Assessment on ETS. Brenton reportedly quit his job with Motorola in 1987 when the company established a restrictive smoking policy and has been a smokers' advocate since that time. Brenton questions the reliability of a report that, in his words, "invented a special science to examine one issue, using non-standard methods." *USA Weekend* concludes the piece by soliciting votes from readers regarding whether the battle against smoking has gone too far or not far enough.

## SCIENTIFIC/TECHNICAL ITEMS

### UPCOMING MEETINGS

- [27] 1993 Annual Summer Toxicology Forum, Given Institute of Pathobiology, Aspen, Colorado, July 12-16, 1993

According to the program for this conference, it will include a session devoted to ETS. Besides an introduction, there will be presentations on the EPA Scientific Advisory Board Review, the EPA Position, the Alternative Viewpoint, and a Panel Discussion.

### LUNG CANCER

- [28] "Indoor Air Pollution and Lung Cancer in Guangzhou, People's Republic of China," Q. Liu, A.J. Sasco, E. Riboli, and M.X. Hu, *American Journal of Epidemiology* 137(2): 145-154, 1993 [See Appendix A]

A number of possible risk factors for lung cancer are investigated in this case-control study, jointly conducted by researchers from China and from IARC. A number of lung cancer risk estimates for measures of home ventilation are presented; the authors conclude that indoor air pollution produced during cooking is a risk factor for lung cancer. They also suggest that spousal smoking may be associated with elevated lung cancer risk. For instance, a point estimate of 2.9 (95% CI 1.2-7.3) is presented for spousal smoking of 20 or more cigarettes per day. The point estimate is based on only 19 cases and 16 controls.

### CARDIOVASCULAR ISSUES

- [29] "Environmental Tobacco Smoke and Coronary Heart Disease," A.K. Armitage, *Journal of Smoking-Related Disorders* 4(1): 27-36, 1993 [See Appendix A]

In this review article, the author examines data concerning claims that ETS exposure may be associated with an increased risk of coronary heart disease

(CHD) in nonsmokers. He concludes that the "case for ETS exposure causing CHD is wholly unconvincing," and calls for the presentation of a "more balanced point of view" on the issue.

- [30] "Passive Smoking and the Risk of Acute Myocardial Infarction," C. La Vecchia, B. D'Avanzo, M.G. Franzosi, and G. Tognoni, *The Lancet* 341: 505-506, 1993 [See Appendix A]

This letter to the editor presents data from a case-control study comparing the risk of acute myocardial infarction (AMI) in nonsmokers married to smokers and nonsmokers married to nonsmokers. Slightly elevated relative risks (1.1-1.3) are reported for marriage to a smoker; none achieves statistical significance.

### RESPIRATORY DISEASES AND CONDITIONS — CHILDREN

- [31] "Relation of Passive Smoking as Assessed by Salivary Cotinine Concentration and Questionnaire to Spirometric Indices in Children," D.G. Cook, P.H. Whincup, O. Papacosta, D.P. Strachan, M.J. Jarvis, and A. Bryant, *Thorax* 48: 14-20, 1993 [See Appendix A]

In this British study, two methods for assessing ETS exposure are used: salivary cotinine measurements and responses to questionnaires. The exposure indices are compared with lung function measurements. The authors report small associations between salivary cotinine and reduced lung function, and also claim that questionnaire data are "as good" as cotinine data in predicting lung function.

- [32] "The Decrease in Severity of Asthma in Children of Parents Who Smoke Since the Parents Have Been Exposing Them to Less Cigarette Smoke," A.B. Murray and B.J. Morrison, *Journal of Allergy and Clinical Immunology* 91: 102-110, 1993 [See Appendix A]

This study reports on a comparison of data on asthma (including lung function) and data on parental smoking, for a group of children in Vancouver, Canada. The authors compare children seen before July 1986 with those seen later, and report that parents have decreased



the number of cigarettes smoked near their children, which the authors then relate to a decrease in the reported severity of asthma.

- [33] "Lung Function, Respiratory Illness, and Passive Smoking in British Primary School Children," R.J. Rona and S. Chinn, *Thorax* 48: 21-25, 1993 [See Appendix A]

The authors of this British study examine reported parental smoking, measures of pulmonary function, and symptoms of respiratory conditions in 2,756 children in various areas of Great Britain. They report "inconsistent" data on parental smoking and children's lung function; the claimed associations vary by child's sex and by which parent reportedly smoked.

- [34] "Hispanic Children With Asthma: Morbidity," P.R. Wood, H.A. Hidalgo, T.J. Prihoda, and M.E. Kromer, *Pediatrics* 91: 62-69, 1993 [See Appendix A]

This study reports a variety of data related to asthma in Hispanic children in Texas. Asthma is reportedly associated with substantial respiratory impairment and school absenteeism in the children studied, who came from low-income families. The authors suggest that intervention focus on further education of families and on reducing ETS exposure (44% of the children studied reportedly were exposed to ETS at home).

---

## OTHER HEALTH ISSUES

- [35] "Editorial: Give a Dog-End a Bad Name," A.D.S. Caldwell, *Journal of Smoking-Related Disorders* 4(1): 1-2, 1993 [See Appendix A]

The managing editor of the *Journal of Smoking-Related Disorders* comments that questions have "recently been raised" in publications concerning the reliability of data on some purported risks of ETS exposure and active smoking. He calls for "solid foundations" for scientific arguments, and announces that his journal is seeking support for an "International Congress" on these issues. [A "dog-end" is a British term for a "butt."]

## ETS EXPOSURE AND MONITORING

- [36] "Analysis of Tobacco-Specific N-Nitrosamines in Indoor Air," K.D. Brunnemann, J.E. Cox, and D. Hoffmann, *Carcinogenesis* 13(12): 2415-2418, 1992 [See Appendix A]

The authors of this study, who have published previously on this topic, report on a method for assessing tobacco-specific N-nitrosamines (TSNA) in indoor air. Based on their measurements, they claim that nonsmokers may be exposed to 0.1-0.3 cigarette equivalents of certain TSNA's, substances that they describe as "highly carcinogenic."

- [37] "Relationship Between Environmental Tobacco Smoke Exposure and Carcinogen-Hemoglobin Adduct Levels in Nonsmokers," S.K. Hammond, J. Coughlin, P.H. Gann, M. Paul, K. Taghizadeh, P.L. Skipper, and S.R. Tannenbaum, *Journal of the National Cancer Institute* 85(6): 474-478, 1993 [See Appendix A]

In this study, levels of 4-aminobiphenyl-hemoglobin adducts were measured in smoking and nonsmoking pregnant women and compared to estimates of ETS exposure (questionnaire, diary, and personal monitor). The authors report that their data support a relationship of increasing adduct levels with increasing reported ETS exposure. They claim that this suggests ETS exposure "is related to levels of a known human carcinogen in nonsmokers" (4-aminobiphenyl has reportedly been associated with and increased risk of bladder cancer in exposed workers). S. Katharine Hammond, lead author of the paper, was a member of the SAB committee that reviewed the EPA Risk Assessment on ETS.

- [38] ♦ "Environmental Tobacco Smoke," A. Rodgman, *Regulatory Toxicology and Pharmacology* 16: 223-244, 1992 [See Appendix A]

While this article responds to the first draft of the EPA risk assessment on ETS, it did not become available until late 1992. The author, formerly with R.J. Reynolds, provides an extensive review of the physics and chemistry of ETS. In particular, he examines 43 substances reported to be carcinogenic, which have been claimed to be present in ETS. Rodgman provides extensive data on animal testing,

2046361353

mutagenicity, exposure and thresholds, and calls on EPA to review these data with respect to ETS.

---

## INDOOR AIR QUALITY

- [39] "The Effect of Varying Levels of Outdoor-Air Supply on the Symptoms of Sick Building Syndrome," R. Menzies, R. Tamblyn, J.P. Farant, J. Hanley, F. Nunes, and R. Tamblyn, *The New England Journal of Medicine* 328(12): 821-827, 1993 [See Appendix A]

Canadian researchers report, in this paper, on a study of 1,500 office workers in four buildings. Ventilation level was experimentally increased in the study, and the authors compared workers' reports of symptoms under the original and new ventilation regimes. They report no effect on workers' perceptions or reports of symptoms related to the increase in outdoor air supply.

- [40] "The Sick Building Syndrome In Office Buildings — A Breath of Fresh Air," K. Kreiss, *The New England Journal of Medicine* 328(12): 877-878, 1993 [See Appendix A]

The author of this editorial describes the paper by Menzies, et al., as a "robust" effort that illustrates "sound experimental and epidemiologic methodology" for IAQ research. She calls for multidisciplinary efforts in the field of "sick" buildings, to develop the "woefully undeveloped and unsupported" scientific data in this area.

---

## SMOKING POLICIES AND RELATED ISSUES

- [41] Letters to the Editor Regarding "Protection from Environmental Tobacco Smoke in California: The Case for a Smoke-Free Workplace," R. Borland, J.P. Pierce, D.M. Burns, E. Gilpin, M. Johnson, and D. Bal, *Journal of the American Medical Association* 268(6): 749-752, 1992

The *Journal of the American Medical Association* recently published two letters concerning this article. As discussed in Issue 29 of this Report, August 28, 1992, the authors proposed that 2.2 million Californians

were exposed to ETS at work in 1990. They also suggested that "adequate protection" of nonsmokers required that workplaces be smoke-free. Two of the authors have been involved in ETS-related issues: David M. Burns was a member of the SAB committee that reviewed the EPA Risk Assessment on ETS, and Ron Borland is a member of the Anti-Cancer Council in Victoria, Australia. The first letter in the current correspondence is from Chris Collett, and is followed by a reply from the authors of the original study, with the exception of Burns. The letters appear in the *Journal of the American Medical Association* 269(11): 1388, 1993.

Collett, an indoor air quality researcher, proposes that the authors' "conclusion does not appear to be justified by the reported data." In particular, he refers to the apparent lack of adequate exposure assessment in the Borland, et al., study. Collett cites his own research group's experience in monitoring ETS levels, and proposes that nonsmoker exposure to ETS can be minimized without prohibiting smoking. Moreover, Collett calls proper ventilation a "key requirement" for minimizing exposure to other components of indoor air.

In their reply, Pierce, et al., comment that Collett's letter "cites studies funded by the tobacco industry." They also state that they "know of no . . . safe level of ETS exposure." Invoking EPA's recent classification of ETS as a "Group A" carcinogen, Pierce, et al., "take the position that any exposure to ETS at all is to be avoided." They again call for "well-enforced smoke-free worksite policies," citing the claimed low cost of such policies compared to modifications of ventilation systems.

---

## IN EUROPE & AROUND THE WORLD

### REGULATORY AND LEGISLATIVE MATTERS AUSTRALIA

- [42] New South Wales Delays Public Smoking Ban

The government of New South Wales has reportedly delayed implementing smoking bans in enclosed public

places so that the state can seek further input from the tobacco industry. Two National Party ministers have apparently criticized the legislation on civil liberties grounds, and hoteliers planned to hold a rally to protest the proposed ban on smoking in pubs and clubs. *See Sydney Morning Herald*, March 24, 1993.

**[43] Total Smoking Ban Not on Government's Agenda**

National Party leader Mr. Tim Fischer reportedly said recently that a Coalition government would not ban smoking altogether as it was a "democratic right." Fischer, answering questions in a Mackay shopping centre on March 9, 1993, admitted he had once smoked a cigarette and enjoyed it immensely. *See The Australian*, March 10, 1993.

AUSTRIA

**[44] Anti-Smoking Bill Drafted**

The Health Ministry has reportedly submitted a draft bill for approval by the Bunderat which would, among other matters, ban smoking in such public places as office buildings, schools, universities, railway stations, snack bars, restaurants, and hotels. The penalty for violation of the measure would be as high as \$8,810. *See Xinhua Language News Service*, March 8, 1993.

Federal Chancellor Vranitzky has reportedly criticized several parts of the draft tobacco law. According to press reports, he has made it clear that no one will be fined for smoking in a nonsmoking area. *See Presse*, March 10, 1993.

CANADA

**[45] Ontario Government Conducts Hearings on Smoking Proposals**

A three-day public hearing was reportedly held before a government committee during which antismoking activists and business owners presented their respective views on the issue of proposals the Ontario government is considering to curb tobacco use. Restaurant owners are apparently concerned that smoking restrictions being considered by the Ontario health ministry will eventually lead to a complete ban on smoking in restaurants, resulting in restaurants going out of

business. According to press reports, ETS is expected to be targeted by the NDP government in the spring following public consultation. *See The Toronto Star*, March 23, 1993.

**[46] Cigarette Package Warnings May Include ETS Message**

On March 19, 1993, Health Minister Benoit Bouchard of Ottawa reportedly proposed new regulations that would require cigarette packages to bear labels warning, among other matters, about the alleged danger of ETS exposure to children. One of the proposed messages would state that "tobacco smoke can harm your children," and would be required to appear in bold black and white letters on 25 percent of the two main panels of cigarette packs. Apparently, this is Ottawa's second attempt to pass such labeling regulations. An earlier attempt reportedly failed when the tobacco companies attempted to block the warnings in a Quebec court. That case is presently being appealed by the tobacco companies to the Supreme Court. *See Canada NewsWire*, March 19, 1993; *The Toronto Star*, March 20, 1993.

GERMANY

**[47] Anti-Smoking Activists Draft Legislation**

The German Non-Smokers' Initiative will reportedly seek to introduce legislation later this year into the Bundestag to regulate smoking in workplaces, public buildings, restaurants, public transportation sites, and at public meetings. The draft legislation, which is based upon the law currently in effect in France, has apparently garnered promises of support from 45 Bundestag deputies. The law would reportedly punish offenders with fines of up to \$6,000. *See The Week in Germany*, March 26, 1993.

INDIA

**[48] Government Considers Smoking Bans**

According to the Minister of State for Health & Family Welfare, the government is proposing legislation that would ban smoking in public places. Administrative instructions have already reportedly prohibited smoking in hospitals, schools, conference rooms,

domestic air flights, some train coaches and public transport. See *Tobacco International*, February 1, 1993.

### ISRAEL

#### [49] Health Ministry Officials Unprepared to Discuss Workplace Smoking Policies

The Knesset Labor and Social Affairs Committee reportedly conducted a meeting on March 15, 1993, to consider the issue of regulation changes that would bar workplace smoking. According to press reports, the committee chair, who is evidently seeking hard data regarding mortality rates among nonsmokers who are exposed to ETS in the workplace and information about attempts by nonsmokers to reach accommodation with their smoking coworkers, berated Health Ministry officials for coming to the meeting without any relevant statistics. The only figures presented at the meeting were apparently provided by the Israel Society for the Prevention of Smoking which reported that 700 nonsmokers die annually as a result of ETS exposure. Health Minister Haim Ramon reportedly initiated the regulation change proposal. See *The Jerusalem Post*, March 16, 1993.

### PHILIPPINES

#### [50] Smoking Restrictions Imposed in Manila

On March 17, 1993, the mayor of Manila reportedly announced that smoking in all public places is prohibited except in designated smoking zones. Violators will apparently face fines of \$12 and/or two days in jail. City officials who break the law can be dismissed from service and face criminal sanctions. See *Xinhua General News Service*, March 18, 1993; *Manila Bulletin*, March 18, 1993.

### UNITED KINGDOM

#### [51] Home Secretary Squelches Attempt to Impose Smoking Ban

Officials at the Home Office reportedly posted notices announcing that as of national No Smoking Day its Queen Anne's Gate headquarters in central London should become a no-smoking zone. Home Secretary Kenneth Clarke, referred to in the press as the "voice of the saloon bar in Cabinet" due to his

"well-known fondness for a pint and cigar," immediately informed the civil servants in the office that he makes the rules and no decisions would be made on the issue without his approval. Meanwhile, Clarke's former ministry, the Department of Health, has declared its offices to be smoke free with the exception of a few designated rooms. See *The Daily Telegraph*, March 9, 1993.

#### [52] Smoking Bans Considered by Numerous Borough Councils

In the wake of the settlement reached in the Veronica Bland case in which an employee of the Stockport council was awarded benefits for injuries allegedly due to ETS exposure in the workplace, Borough Councils in Walsall, Sedgemoor, Ealing, Slough, West Lothian District, Hereford and Maidstone are reportedly discussing proposals to ban or restrict smoking by staff and visitors in their facilities. A number of newspaper accounts report the actions being taken; they include articles in *Wolverhampton Express & Star*, March 9, 1993; *Burnham & Highbridge Mercury*, March 2, 1993; and *Ealing Recorder*, March 4, 1993. These councils join those in Lincoln and Exeter which are also in the process of adopting smoking bans. See issue 43 of this Report, March 19, 1993.

### ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

#### UNITED KINGDOM

#### [53] *Wright v. Ladbroke's* (Industrial Tribunal, Birmingham, England) (filed December 20, 1991)

Hearings were reportedly underway in late March in a case involving a bookmaker's cashier who was fired from her job because she violated a company policy which banned smoking behind the counter. See Appendix B to issue 25 of this Report, July 7, 1992. According to testimony presented in the case, Pauline Wright, who is 40 and smokes some 30 cigarettes a day, objected strenuously when the new policy was introduced, but turned down an offer to transfer to a quieter shop where she could smoke. She was fired in July 1991 when her supervisor found her smoking